

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Monte Wissel,

Plaintiff,

v.

United Rentals, Inc.,

Defendant.

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant United Rentals (North America), Inc., incorrectly named in the caption of this action as “United Rentals, Inc.” (“Defendant”), by and through its counsel of record, hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of its Notice of Removal, Defendant states as follows:

**State Court Litigation**

1. Plaintiff Monte Wissel (“Plaintiff”) commenced this litigation by serving his Summons and Complaint on Defendant on November 16, 2021. A copy of Plaintiff’s Summons and Complaint is attached hereto as **Exhibit A**. Defendant filed the Summons and Complaint at the same time it filed a copy of the Notice of Removal with the Williams County District Court.

2. Defendant has not filed an Answer or otherwise responded to the Complaint. Moreover, per agreement of the parties, the time for Defendant to file a responsive pleading has not expired. Defendant will answer or otherwise respond to the Complaint in compliance with the deadlines set forth in Fed. R. Civ. P. 81(c).

### **Removal is Timely**

3. Because thirty days have not yet expired since this action became removable to this Court, removal is timely under 28 U.S.C. § 1446(b).

### **Venue and Jurisdiction Are Proper in This Court**

4. Because Williams County, North Dakota, is within the Court's judicial district, the Court "embrac[es] the place where [this] action is pending" and has removal jurisdiction under 28 U.S.C. § 1441(a).

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because (i) it is between "[c]itizens of different States;" and (ii) the "matter in controversy exceeds the sums or value of \$75,000, exclusive of interests and costs."

### **Complete Diversity Exists**

6. Plaintiff is a resident and citizen of the State of North Dakota.

7. Defendant is a Delaware corporation, with its principal place of business in Connecticut.

8. Because Plaintiff is a citizen of North Dakota, and Defendant is not, diversity of citizenship exists under 28 U.S.C. § 1332.

### **The Amount in Controversy Requirement is Satisfied**

9. The value of Plaintiff's alleged damages exceeds \$75,000.

10. The Complaint does not specify any damages amount. However, in a June 29, 2021 demand letter addressed to Defendant's insurer, Plaintiff's counsel asserted an itemized damages claim against Defendant that totaled \$539,861.01, including past and future medical expenses, lost income and non-economic damages. **Exhibit B.**

11. Where removal of a civil action is sought on the basis of diversity jurisdiction:

The sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that the notice of removal may assert the amount in controversy if the initial pleading seeks ... a monetary judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and removal of the action is proper on the basis of an amount in controversy asserted ... if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds [\$75,000.00].

28 U.S.C. § 1146(c)(2).

12. For these reasons, this Court has original jurisdiction over this action and removal is proper. Further, removal is proper under 28 U.S.C. § 1446(c)(2)(B) if the court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

### **Filing of Removal Papers**

13. Pursuant to 28 U.S.C. § 1446(d), upon filing of this Notice of Removal, Defendant will file a true and correct copy of this Notice of Removal with the Clerk of the North Dakota District Court, Northwest Judicial District, Williams County in which the action is currently pending. Defendant will also provide written notice of this Notice of Removal to Plaintiff.

14. Defendant submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has pleaded any claims upon which relief can be granted, and without admitting that Plaintiff is entitled to any monetary or equitable relief whatsoever. Nothing in this Notice of Removal shall be

interpreted as a waiver or relinquishment of any right to assert any defense or affirmative matter, including but not limited to (1) lack of jurisdiction; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) failure to join an indispensable party or parties; or (8) any other pertinent defense available. Defendant reserves the right to amend or supplement this Notice of Removal.

15. Defendant has met its burden to establish federal jurisdiction over this action pursuant to 28 U.S.C. § 1332, thereby entitling Defendant to remove this case to this Court under 28 U.S.C. § 1441(a). Defendant respectfully requests that this Court assume jurisdiction over this case for all further proceedings.

16. WHEREFORE, Defendant requests that the above action now pending against it in the State of North Dakota District Court, County of Williams, Northwest Judicial District, be removed therefrom to this Court.

Dated: December 15, 2021

NILAN JOHNSON LEWIS PA

By: /s/ Courtney E. Ward-Reichard

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